

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DEC 26 2018

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SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOHN SCHLABACH,

Plaintiff,

vs.

UNITED STATES,

Defendant

Case No.: 2:18-cv-00053-SMJ

REPLY TO GOVERNMENTS OPPOTITION TO  
MOTION FOR PARTIAL RELIEF FROM ORDER,  
PURSUANT TO RULE 60

I herein respond to the opposition filed by the government. Reviewing the record, I should not have to say anything just as the government didn't have to say anything on the initial filing. The court reviewed the record and determined I failed to follow the rule 4 service mandates and denied my motion for default.

In the court's ruling it ignored the lack evidence in this case in making its ruling.

**THE GOVERNMENTS OPPOSITION DOES NOT DENIAL THE BURDEN OF  
PROOF IS THE IRS. BURDEN OF PROOF**

The legal mandate that the burden, relative to penalties, is on the government and the government is not opposed and there is no opposition to the motion. Therefore, the court need only review the record for evidence to support the allegations of a frivolous filing. If there is no such evidence, then pursuant to the complaint and relief requested the court must also rule there is no evidence of a frivolous filing presented by the government and must therefore also rule that the penalties must be denied.

Definition(s) of burden of proof; Duhaime's Law Dictionary

*"Burden of proof has two distinct meanings; that generally the burden of proof, in the sense of producing evidence, passes from party to party as the case*

1 progresses, while the burden of proof in the sense of the obligation to establish the truth  
2 of the claim by a preponderance of the evidence rests throughout upon the party  
3 asserting the affirmative of the issue, and that, in the contest of a will, the burden of proof  
4 is on the proponent to prove the will."

6 Legal Dictionary Definition of Burden of Proof

7  
8 **Noun**

- 9 1. The obligation to present **evidence** to the court or jury to prove one's case.

10  
11 Burden Of Proof - FindLaw Legal Dictionary

12 <https://dictionary.findlaw.com/definition/burden-of-proof.html>

13  
14 "the responsibility of producing sufficient evidence in support of a fact or  
15 issue and favorably persuading the trier of fact (as a judge or jury) regarding that fact"

16 The question I have is where is this evidence? This is not only a surprise;  
17 the judicial machinery has failed. The court committed clear error. It is Unconscionable the  
18 massive misrepresentations through the court system that was perpetrated in this case. The court  
19 had to slander, be biased, perpetrate the unsubstantiated, unfounded statements and rule clearly  
20 contrary to the facts of the case to reach its decision.

22 **ARGUMENT**

23  
24 If the court wanted to be fair it would have ruled the same way it did at the onset  
25 when it denied my motion for default. It simply ruled there was no evidence the local attorney  
26 was served and therefore denied the motion for default. In ruling on the governments motion it  
27 ruled the opposite, making finding contrary to any evidence. It should have ruled as to the  
28

1 penalties the burden is on the government and there being no evidence to support the allegations  
2 of filing frivolous documentation deny the penalties.

3           The governments opposition is nonsensical and non-responsive to the motion for  
4 relief from the order. There is no denial the burden is on them, nor that there is no evidence to  
5 support any penalty for any of the years. There is no denial that the slanderous, radical and racist  
6 remarks made by the court are unfounded, biased and clearly an error by the court to make any  
7 such arguments or statements.  
8

9           I don't have to say anything as the **only** facts in the record from the government is  
10 clearly perjured, no evidence to support the allegations of a frivolous filing nor of making any  
11 such determination as provided by statute and outlined by the secretary of the treasury.  
12

13           The government did not deny that the outlandish claims made by the court are  
14 clearly incorrect radical, racist and prejudicial.  
15

### 16           **Fraud on the Court Law and Legal Definition**

17 Fraud on the court occurs when the judicial machinery itself has been tainted, such as when an  
18 attorney, who is an officer of the court, is involved in the perpetration of a fraud or makes  
19 material misrepresentations to the court or the court itself. Fraud upon the court makes void the  
20 orders and judgments of that court.

21  
22 In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon  
23 the court is fraud which is directed to the judicial machinery itself and is not fraud between the  
24 parties or fraudulent documents, false statements or perjury. ... It is where the court or a member  
25 is corrupted or influenced or influence is attempted or where the judge has not performed his  
26 judicial function --- thus where the impartial functions of the court have been directly corrupted."  
27  
28

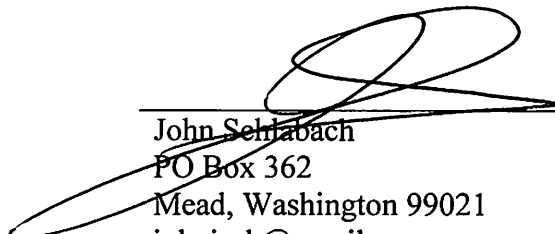
1 What is Fraud on the Court?

2 Fraud on the Court, or Fraud upon the Court, is where a material misrepresentation has  
3 been made to the court, or by the court itself. The main requirement is that the  
4 impartiality of the court has been so disrupted that it can't perform its tasks without bias  
5 or prejudice.

6 All the cases in the 9<sup>th</sup> circuit court demand facts and evidence from the party that has the  
7 burden of proof. There are no facts from the secretary, nor are there any determination, in the  
8 cited rulings that demanding a redemption pursuant to 12 USC 411 is frivolous.

9 **WHEREFORE**, the government opposition does not deny the burden therefore agrees  
10 with the motion for relief as to the burden. The court can easily review the record and find there  
11 are no facts or evidence to support the burden as to any penalties, the court must reconsider the  
12 ruling on the penalties and remove the slanderous, unfounded statements and racist remarks and  
13 deny any penalties.  
14

15 Dated this 23rd day of December, 2018.

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOHN SCHLABACH,

Plaintiff,  
vs.

INTERNAL REVENUE SERVICE AND ITS  
AGENTS,

Defendant

Case No.: 2:18-cv-00053-SMJ

CERTIFICATE OF SERVICE OF REPLY TO  
GOVERNMENTS OPPOTITION TO MOTION FOR  
PARTIAL RELIEF FROM ORDER, PURSUANT TO  
RULE 60

I hereby certify under penalty of perjury that I served a true and correct copy of the foregoing " REPLY TO GOVERNMENTS OPPOTITION TO MOTION FOR PARTIAL RELIEF FROM ORDER, PURSUANT TO rule 60" on the defendants' attorney by depositing the copy with the US postal service, postage prepaid, personal delivery, addressed to the following.

RIKA VALDMAN  
Trial Attorney, Tax Division  
U.S. Department of Justice  
P.O. Box 683  
Washington, D.C. 20044

United States Attorneys Office  
PO Box 1494  
Spokane, Washington 99210-1494

Dated this 23 day of December, 2018

  
John Schlabach